

Tennessee Trial Court Vacancy Commission
Application for Nomination to Judicial Office

9/8/20

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INTRODUCTION

Tennessee Code Annotated section 17-4-301 et seq. charges the Trial Court Vacancy Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Commission needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in Microsoft Word format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Commission requests that applicants obtain the Microsoft Word form and respond directly on the form. Respond in the box provided below each question. (The box will expand as you type in the document.) **Review the separate instruction sheet prior to completing this document. Submit by the noon deadline date an original (unbound) completed application (with ink signature) to the Administrative Office of the Courts.** In addition, submit a digital copy with electronic or scanned signature via email to ceesha.lofton@tncourts.gov, or via another digital storage device such as a flash drive. See section 1(g) of the application instructions for additional information related to hand-delivery of application packages.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Assistant District Attorney General, 25th Judicial District

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

1978, 006177

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee only

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any State? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

Private practice in Somerville, TN from October 1978 to October 1992. Served as Assistant District Attorney General since that date (and as a part-time Assistant District Attorney General in 1991)

6. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

100% criminal practice

7. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters.

My private practice from 1978 to 1992 as a general, small town practitioner: domestic, civil (including domestic, property work and probate) and a limited appellate practice. I also practiced criminal law in Sessions and Circuit Court. Since 1992 I have had an exclusive criminal practice in sessions and circuit court.

8. Describe any matters of special note involving your practice in trial courts, appellate courts, and administrative bodies.

One of the first cases I prosecuted had a profound effect on me emotionally. This was a case originally indicted for first degree murder in perpetration of child abuse. (State v. Eric Keener, Tipton Circuit #2394) (1992). A recent change in Tennessee law necessitated an amendment to second degree murder. Keener was the boyfriend of the victim's mother. The victim was a two-year-old boy and had been a victim of severe child abuse basically his entire life. The mother was supportive of Keener and was herself charged. The problem with the proof was that it depended, in large part, on the mother and the boy's very young siblings. I was fortunate in being able to obtain a conviction with the introduction of very limited evidence of child abuse. Years later, by happenstance, I saw the little boy's grave in a local cemetery. It had no headstone; it was marked only by the temporary funeral home marker.

Another case which affected me involved the multiple rape of a very young girl over a course of time. (State v. Roy Don Gibson, Fayette Circuit #4103 (1995)). The problem with the proof was not that Gibson had not done bad things sexually to the little girl; he was taped admitting such to the girl's mother (his wife) who was wearing a wire for the TBI. The problem was in proving through the young witness what exactly had been done, where it had been done (venue), and approximately when it was done. This is difficult when the victim is young and there are numerous acts over a period of time. Fortunately, the little girl was a dynamite witness, and Gibson was convicted of multiple counts of child rape. The defense attorney was placed in the unenviable position of arguing at trial and appeal that the State had allowed her to testify holding her favorite doll to elicit jury sympathy.

In another Fayette County case, I was placed in the unenviable position of assisting in the

prosecution of a Fayette County deputy for the first degree murder of a truck driver. (State vs. Myles Aaron Woodall, Fayette Circuit #3966. Woodall, while on duty and in a marked Sheriff's car, had stopped an 18-wheeler on I 40, presumably to extort money from the truck driver. The driver balked at paying Woodall, who then placed him in the back of the patrol car and took him to a secluded wooded area where he executed him. The case against Woodall was strong, but completely circumstantial. The defense attorney was greatly concerned that the State would introduce evidence of Woodall's predilection for teenage boys. This was marginally relevant to the case, but the State did not introduce such evidence. Woodall was convicted of first degree murder.

In 1999, I assisted in the prosecution of two individuals in a double homicide. (State vs. Oscar Scott, Fayette Circuit #4754 and State vs. Mila Love, Fayette Circuit #4754). The case involved the use of cellular telephone records to establish that Love had called from the residence of the victims in the early morning hours of the day they were murdered. The person that Love had called was located and testified that Love told him she and Scott were going to "gank" the victims. The case turned in part on what "gank" meant. The witness testified he took it to mean "rob." The defense attorney attempted to introduce evidence from the DEA website that "gank" means to "rip off" in a drug deal. The defendants were tried separately. Love, who had set up the events, was convicted of first degree murder. Scott, who was tried by a second jury, was convicted of the lesser offense of facilitation, even though he was by all accounts the shooter.

A Fayette County case I assisted in prosecuting in 2000 resulted in three separate trials for the three defendants in one homicide. Cousins Robert and Antonio Carpenter and a juvenile, Eric Glover, were found by three separate juries to be guilty of kidnapping and murder of an elderly woman. The victim had been carjacked in Collerville, and driven some thirty miles to Robert Carpenter's house in rural Fayette County where she was run over by her own Suburban.

Eric Glover, was not, unfortunately, the only juvenile I have prosecuted and convicted of first degree murder, but one of several. In 1999, I prosecuted then seventeen year old Waldo Wiggins for the murder of his pregnant girlfriend, Tatrina Terry. (State vs. Waldo Wiggins, Tipton Circuit #3945, 1999) What Mr. Wiggins did not know was that the victim was not pregnant with his child. He also did not know that ballistics and DNA evidence would conclusively connect him to her murder. Wiggins was apparently concerned that his father would be upset with him if he lost his handgun. He dutifully returned it to his father's closet after the murder. It was recovered the next morning by law enforcement. Had it not been, he might well never have been charged.

I have assisted in the prosecution of two separate cases in which because of the overwhelming evidence of guilt, the defendants pled guilty to murder in the first degree, reserving the right to be sentenced separately. In State vs. Kelvin Lee (Lauderdale Circuit #6089, 1995) Lee pled guilty and put the issue of life or life without parole to a jury. Lee's psychologist testified on his behalf, but did not prepare a report on his findings. This was apparently done to limit the State's right to discovery. Because of this I was allowed to question the psychologist regarding notes he had made from his interview with Lee. These were far more damning than his report would have been. The jury gave him life without parole. In an even more unusual situation, Kenneth ("Goose") Henderson pled guilty to, among other things, first degree murder. He submitted sentencing not to a jury, but to a trial court. He received the death penalty. (Fayette Circuit

#4465)

In 1999 I prosecuted a juvenile in Lauderdale County for the brutal beating death of an elderly man. State vs. James Latham, Lauderdale Circuit #6665. This case was unusual in that the victim showed up for the juvenile transfer hearing of his own murderer. The victim had been released from the hospital to his family and did not die until some time later. He lived to describe his attack. The issue of course became one of cause of death. In my opinion the State's medical examiner came across as more credible than the defendant's expert, Dr. Charles Harlan. The jury apparently agreed. Latham was convicted of second degree murder.

I was involved in the prosecution of a second case in which an elderly victim lived long enough to describe his murderer. In State vs. James Robert Davis, Tipton Circuit #4520, 2003, the victim was an 85 year old man mugged at his own home by Davis, an opportunistic thief who was driving around the countryside looking for a weed eater or anything else to steal to support his drug habit. Davis sucker punched his victim, who was reaching in his pocket to give him five dollars. The victim's only apparent injuries were a bloodied nose and blackened eye, which were captured in a Polaroid photo of the victim taken by law enforcement soon after the attack. The elderly gentleman lapsed into a coma soon after his photo was taken. He died soon thereafter. His written statement to law enforcement was used against Davis, not as a dying declaration, but as an excited utterance. Davis' fate was sealed when after he was jailed, he called his mother to describe what had happened. He apparently disregarded the taped message on the jail telephone that calls could be monitored and recorded. His call was recorded and played at trial. Davis was convicted of felony murder.

The above represents cases through 2004 contained in my 2004 judicial application (See 10. below)

Since 2005, I have successfully prosecuted a sheriff for facilitation of escape, a chief of police for official misconduct, police officers for official misconduct or oppression, husbands for killing wives, wives for killing husbands, a grandmother for killing her granddaughters, a pastor for raping underage boys in his care and a mother for raping her daughter, along with scores of other cases.

Through May 2021, I have prosecuted 321 jury trials, including 45 murders (two resulting in imposition of the death penalty). Each and every one of these are "matters of special note" to me. I have no appellate or administrative experience.

9. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Commission.

None

10. List and describe all prior occasions on which you have submitted an application for any state or federal judicial position.

In November 2004, I applied for a Circuit Court opening in this district, which ultimately went to the current Judge Weber McCraw. In 1993 or 1994, I submitted an application for appointment to the Court of Criminal Appeals; I was not submitted as a nominee.

EDUCATION

11. List each college, law school, and other graduate school which you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

University of the South, Sewanee, TN, 1971-1975, B.A., political science, summa cum laude, Phi Beta Kappa.

University of Tennessee, College of Law, 1975-1978, J.D., Order of the Coif. Ranked second in class.

PERSONAL INFORMATION

12. State your date of birth.

██████████ 1953

13. How long have you lived continuously in the State of Tennessee?

All my life.

14. How long have you lived continuously in the county where you are now living?

Since 1989

15. State the county in which you are registered to vote.

Tipton

16. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

None

17. Have you ever pled guilty or been convicted or are now on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No.

18. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.

19. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint. You may wish to request a report from the appropriate supervisory authority (or authorities) for a complete history.

None.

20. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No.

21. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No.

22. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

Divorced July 2002, Tipton Chancery 20, 107. (Re-married September 2008). Also, in Fayette Chancery #12931, my sister and I were successful years ago in resolving issues relating to my father's insurance proceeds.

23. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices which you have held in such organizations.

I have been a director of Professional Care Services over the last 20 years. I am currently on Governance and Executive Committees at PCS. I am a Ruling Elder at First Presbyterian Church Covington (EPC), and have been over the course of several years. I am the current Clerk of Session.

24. Have you ever belonged to any organization, association, club or society which limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
 - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No.

ACHIEVEMENTS

25. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

None.

26. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school which are directly related to professional accomplishments.

Co-winner 2008 President's Award, District Attorney General's Conference
Co-winner 2018 Advisory Committee on Arson Prosecutor of Year

27. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

I ran for Circuit Judge (unsuccessfully) in 1990, against the current Judge Joseph Walker. I was an applicant for Circuit Judge in 2004 and was among the three finalists (the winner being current Judge Weber McCraw).

ESSAYS/PERSONAL STATEMENTS

28. What are your reasons for seeking this position? *(150 words or less)*

I have been public service since 1991. Whether in public or private service, I believe in duty. I believe that the duty of a judge is to show up on-time, work a full day, be courteous to attorneys and litigants, do yeoman like work, be current in legal thought, judicious, even-tempered, timely in the issuance of rulings, respectful toward victims, efficient in moving the docket, and even-handed in the administration of justice, and as free as is humanly possible from race and class consciousness.

I said this in my 2004 application, and I stand by it now. My sense of duty compels me to seek this position.

29. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

The 25th District is a five county district, predominantly rural, composed of two counties north of Shelby County (Lauderdale and Tipton) and three counties east of Shelby County (Fayette, Hardeman, and McNairy).

It is a rather large geographical area, from Halls in the north to the community of Adamsville in the east, a distance of 140 miles. This area has only four judges of courts of record, two

Chancellors and two Circuit Judges. The Circuit Judges for all intents and purposes handle all jury trials: all criminal jury trial and some civil trials. My selection would allow the upcoming vacancy to be filled by someone with extensive background in Circuit Court : 321 jury trials and thousands of non jury matters.

Prior to becoming an Assistant District Attorney, I had a general legal practice for fourteen years.

The docket, especially the jury docket, is too overloaded and complex to allow on the job training.

30. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes. I am well familiar with Rule 10, Rules of the Supreme Court of Tennessee, the Code of Judicial Conduct.

Accordingly, I can unreservedly take the oath required under TCA18-1-104.

I am well familiar with codes of conduct and what duty requires.

As a church officer, I have sworn a duty to conform my conduct with the Westminster Confession of Faith.

As a professional prosecutor, I have long ago sworn to be bound by prosecutorial ethics.

I would hope that my entire professional career is such an example: I would challenge anyone to find an example from my experience of 43 years as a licensed attorney that shows otherwise.

REFERENCES

31. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Commission or someone on its behalf may contact these persons regarding your application.

A. Rev. Dr. Scott Sealy, [REDACTED] Covington, TN 38019, [REDACTED]
B. Judge Weber McCraw, Circuit Court, 25 th Jud. District, [REDACTED]
C. Sheriff "Pancho" Chumley, Tipton County Sheriff's Office, [REDACTED]
D. Charlotte Kelley, [REDACTED]

E. Mark E. Davidson, District Attorney General, 25 th Judicial District, [REDACTED]

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the [Court] Circuit Court 25th Judicial District of Tennessee, and if appointed by the Governor, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Commission members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: June 13, 2021.


Signature

When completed, return this questionnaire to ~~Cecilia~~ Lofton, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219



TENNESSEE TRIAL COURT VACANCY COMMISSION
ADMINISTRATIVE OFFICE OF THE COURTS
 511 UNION STREET, SUITE 600
 NASHVILLE CITY CENTER
 NASHVILLE, TN 37219

TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Trial Court Vacancy Commission to request and receive any such information and distribute it to the membership of the Commission and to the Office of the Governor.

James Walter Freeland, Jr.
Type or Print Name


Signature

June 13, 2021
Date

006177
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

None
